

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ella Mintz	Team: Squad #10	CCRB Case #: 201608053	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 09/17/2016 11:58 PM	Location of Incident: § 87(2)(b) and 106th Precinct stationhouse	Precinct: 106	18 Mo. SOL 3/17/2018	EO SOL 3/17/2018	
Date/Time CV Reported Tue, 09/20/2016 12:19 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/20/2016 12:19 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			106 PCT
2. POM James Vogel	18647	947586	106 PCT
3. POM Vladimir Alonzo	27966	957329	106 PCT
4. SGT Pedro Cabral	00867	936270	106 PCT
5. CPT Eric Robinson	00000	934118	113 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT John Corde	01732	936386	106 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM James Vogel	Force: In front of § 87(2)(b) in Queens, Police Officer James Vogel used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Vladimir Alonzo	Force: In front of § 87(2)(b) in Queens, Police Officer Vladimir Alonzo used physical force against § 87(2)(b)	§ 87(2)(b)
C.CPT Eric Robinson	Abuse: Captain Eric Robinson authorized the entry of the backyard of § 87(2)(b) in Queens	§ 87(2)(b)
D.CPT Eric Robinson	Abuse: Captain Eric Robinson authorized the seizure of § 87(2)(b)'s property.	§ 87(2)(b)
E.SGT Pedro Cabral	Discourtesy: At the 106th Precinct stationhouse, Sergeant Pedro Cabral spoke discourteously to § 87(2)(b)	§ 87(2)(b)
F. An officer	Discourtesy: At the 106th Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)	§ 87(2)(b)

Case Summary

On September 17, 2016, § 87(2)(b) hosted a get together for his friends and family in the backyard of his home, located at § 87(2)(b) in Queens. At 11:58 PM, Police Officers James Vogel and Vladimir Alonzo, both of the 106th Precinct, responded to a noise complaint at this location. § 87(2)(b) alleged that PO Alonzo told him, “Why are you playing the music so loud? You’re under arrest.” PO Vogel and PO Alonzo allegedly used physical force to arrest § 87(2)(b) (**Allegations A and B**) Sergeant John Corde, also from the 106th Precinct, arrived at the location after § 87(2)(b) was placed in custody. Sergeant Corde called the Queens Patrol Borough South duty captain, Captain Eric Robinson, in order to receive authorization to enter § 87(2)(b)’s backyard and seize his speakers. Captain Robinson authorized the entry of § 87(2)(b)’s backyard and authorized the seizure of his speakers. (**Allegations C and D**) Upon arrival at the 106th Precinct stationhouse, § 87(2)(b) was taken to the desk for processing. § 87(2)(b) asked the desk sergeant, Sergeant Pedro Cabral, for twenty dollars. Sgt. Cabral allegedly responded, “Why don’t you shut the fuck up?” (**Allegation E**) After being placed in the holding cell, § 87(2)(b) asked an unidentified officer to let him go. The officer allegedly responded, “Shut the fuck up.” (**Allegation F**) § 87(2)(b) was charged with resisting arrest and disorderly conduct for the noise violation. (Board Review 01) There is no video footage of this incident. This case was originally assigned to Inv. Gabriella Carpenter and was reassigned to the undersigned on September 26, 2016.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b)’s arrest.
- As of December 20, 2016, § 87(2)(b) has not filed a notice of claim in connection with this incident. (Board Review 02)
- § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b).

Civilian and Officer CCRB Histories

- This is the second CCRB case filed by § 87(2)(b) and the first that falls within the CCRB’s jurisdiction. (Board Review 04) CCRB #200903857 was referred to OCD.
- PO Vogel has been a member of service for eight years and this is the first case in which he is a subject officer.
- PO Alonzo has been a member of service for one year and has had one other complaint filed against him, involving five allegations, three of which were force allegations. The case was closed as complainant uncooperative. There are no substantiated allegations against him.
- Captain Robinson has been a member of service for twelve years and has had three other complaints filed against him, involving six allegations. In CCRB #200412910, allegations of refusal to provide name and shield and a retaliatory arrest were substantiated; the NYPD imposed instructions as a penalty. In CCRB #200610087, a “premises entered and/or searched” allegation was substantiated, and the CCRB recommended charges. Captain Robinson pled guilty and was issued Command Discipline B. In CCRB #201306122, a “stop” allegation was substantiated. The CCRB recommended charges; the case is currently with the APU.

- Sgt. Cabral has been a member of service for eleven years and this is the first case in which he is a subject officer.

Potential Issues

- § 87(2)(b) did not cooperate in providing contact information for witnesses who were allegedly present during this incident.

Findings and Recommendations

Allegation A–Force: In front of § 87(2)(b) in Queens, Police Officer James Vogel used physical force against § 87(2)(b)

Allegation B–Force: In front of § 87(2)(b) in Queens, Police Officer Vladimir Alonzo used physical force against § 87(2)(b)

It is undisputed by all parties that PO Vogel and PO Alonzo responded to § 87(2)(b)'s house following a noise complaint and that the officers used physical force to effect § 87(2)(b)'s arrest. § 87(2)(g)

§ 87(2)(b) provided three statements to the CCRB, all of which were generally consistent. § 87(2)(b) testified that he was having a get together of about 15 members of his friends and family at his house. (Board Review 05) § 87(2)(b) provided the names of two attendees, his wife, § 87(2)(b) and his brother, § 87(2)(b) but refused to divulge the names of the other attendees, including those who watched the alleged force occur. § 87(2)(b) had a half of a bottle of Corona and stated he was not drunk at the time of the incident. One of the attendees of the party told § 87(2)(b) that two officers were there to see him. § 87(2)(b) went to the front yard, where PO Alonzo and PO Vogel were standing in front of their marked vehicle. PO Alonzo stated, “Why are you playing the music so loud? You’re under arrest.” § 87(2)(b) did not have a chance to respond. PO Alonzo used one hand to grab the rear collar of § 87(2)(b)'s shirt and pushed him against the side of the police car; he fell on his left side. PO Alonzo handcuffed § 87(2)(b) while he was on the ground and used two hands to push him by his shoulders inside the backseat of the RMP.

Both § 87(2)(b) (Board Review 06) and § 87(2)(b) (Board Review 07) stated, in phone interviews with the CCRB, that they were not present for this portion of the incident.

PO Vogel (Board Review 08) and PO Alonzo (Board Review 09) both stated that they responded to § 87(2)(b)'s house with the intention of issuing a warning for the noise complaint. The officers both stated that § 87(2)(b) was intoxicated at the time of the incident. The officers asked for § 87(2)(b)'s identification multiple times so they could confirm that he was the homeowner in order to issue him a warning for the noise complaint. § 87(2)(b) refused each time, screaming something to the effect of, “I’m not gonna give you my ID!” § 87(2)(b) then ran away from the officers, toward the driveway leading to his backyard. PO Vogel ran after § 87(2)(b) and grabbed him by the arm and walked him back toward the RMP. At this point, PO Alonzo and PO Vogel attempted to place § 87(2)(b) in handcuffs, but he flailed his arms and tried to bring his hands to his chest. While handcuffing § 87(2)(b) PO Vogel put in a request for additional units because civilians came to the front yard to see what was going on. According to both officers, § 87(2)(b) refused to enter the police vehicle so PO Vogel pulled § 87(2)(b) in

PO Alonzo, PO Vogel, and Sgt. Corde all corroborated that civilians at the party were asked to lower the music multiple times and it was not lowered. They all corroborated that the reason it was necessary to get the speakers was because it was evidence for § 87(2)(b)'s arrest. PO Alonzo and PO Vogel both testified that the speakers were located in the backyard.

Sgt. Corde stated that the speakers were located in the driveway. Sgt. Corde called Captain Robinson because the patrol guide procedure for noise complaints is that if officers want to remove property from a civilian's home, they need to contact the duty captain for permission. Sgt. Corde informed Captain Robinson, "They're not turning the music down, it's getting louder. We want to go in and voucher the speakers." Captain Robinson said, "Okay. Where are they located?" Sgt. Corde said, "The driveway." Captain Robinson said, "Okay, have the officers go in and voucher the speakers and bring it to the precinct." Officers then went to the driveway and removed the speakers.

Captain Robinson testified that on the day of the incident, a sergeant called him, and stated there was a noise complaint for a backyard party in a residential neighborhood and he and his officers had made every effort to get the noise lowered to no avail. Captain Robinson did not know what those efforts were. The sergeant did not explain these efforts beyond the fact that they tried to work it out and tried to get them to lower the music, and they didn't do it. Captain Robinson responded, "Is this really the last resort? You can't work this out?" The sergeant said, "No, they're not complying. There's a lot of complaints about the backyard party. We have no other options, that's why I'm calling you." The sergeant did not mention anything about an arrest or anything about someone currently in police custody. Captain Robinson gave the sergeant permission to seize the property after hearing that it was the last resort.

Patrol Guide 214-23 lists the steps officers must follow when attempting to correct a noise complaint (Board Review 12). Officers must interview complainants/violators, determine if the noise is unreasonable, and attempt to correct the condition by warning the violator. A summons will be issued if the condition cannot be corrected and the music equipment will be seized. Patrol Guide 214-23 goes on to state that "the decision to forcibly enter into private or semi-private premises to correct noise complaints will ONLY be made by a precinct commander/duty captain and ONLY as a last resort, after requests to stop the noise have been ignored. Some of the factors going into the decision to forcibly enter such premises are a) Time of day b) Type of neighborhood (commercial/residential) c) Number of complaints d) The ambient noise level of the area generally."

§ 87(2)(b), § 87(2)(g)

According to § 87(2)(b) and the officers, officers did ask people at the party to lower the music and it was not lowered. According to both witnesses and the officers, the noise was not corrected until the officers actually disconnected the speakers. § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation E-Discourtesy: At the 106th Precinct stationhouse, Sergeant Pedro Cabral spoke discourteously to § 87(2)(b)

It is undisputed that § 87(2)(b) was brought to the desk inside the stationhouse and that Sgt. Cabral, PO Alonzo, and PO Vogel were all present for his processing. § 87(2)(g)

§ 87(2)(b) testified that PO Vogel and PO Alonzo transported him to the 106th Precinct stationhouse, and brought him to the desk. Sgt. Cabral and two uniformed officers were behind the desk. PO Vogel and PO Alonzo went through § 87(2)(b)'s pockets and gave his money to Sgt. Cabral. § 87(2)(b) asked Sgt. Cabral, "Officer, could you give me twenty dollars?" § 87(2)(b) wanted this money so he could take a taxi home from court. Sgt. Cabral then allegedly responded, "Why don't you shut the fuck up?" § 87(2)(b) did not speak after that. § 87(2)(b) did not make this allegation in his initial phone statement with the CCRB. (Board Review 13) In a phone statement on September 21, 2016, § 87(2)(b) stated that when he asked for the money, Sgt. Cabral responded, "You can't get no fucking money." (Board Review 14)

Sgt. Cabral (Board Review 15), PO Vogel, and PO Alonzo all testified that § 87(2)(b) never asked for twenty dollars or any money at the desk and Sgt. Cabral never responded, "Why don't you shut the fuck up?" and never used any profanity in speaking with him. Sgt. Corde testified that when he arrived at the stationhouse, he saw § 87(2)(b) at the front desk but he did not hear any conversation between him and the officers at the desk.

Patrol Guide Procedure 203-09 states that officers must be "courteous and respectful" in their dealings with the public. (Board Review 16)

§ 87(2)(b), § 87(2)(g)

Allegation F-Discourtesy: At the 106th Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that after approximately an hour of being in the holding cell, he asked a white uniformed officer if he could be released with a summons. The officer responded, "Shut the fuck up." § 87(2)(b) stated there was no one else in the holding cell at the time. § 87(2)(b) also made this allegation in his phone statement on September 21, 2016 but did not allege this during his initial statement with the CCRB. § 87(2)(b) described this officer as a white male in his thirties.

Both PO Alonzo and PO Vogel testified that they both conducted checks on § 87(2)(b) while he was in the cell and that they did not see any other officers talking to § 87(2)(b) while he was in the cell. Sgt. Cabral stated that there are cameras that show the cell area at the front desk but he did not see any officer speak to § 87(2)(b). All of the officers denied hearing an officer say, “Shut the fuck up” to § 87(2)(b) while he was in the cell.

According to the 106th Precinct roll call, there was no officer specifically assigned to watch the cells on this night. (Board Review 17) § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date